

IDAHO PM-10—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
Remainder of AQCR 63 .....	11/15/90	Unclassifiable.		
Metropolitan Boise the Intrastate AQCR 64: Ada County: Boise .....	3/12/99	Pre-existing .....	3/12/99 PM-10 NAAQS NA	Pre-existing PM-10 NAAQS NA
<p><i>Northern Boundary</i>—Beginning at a point in the center of the channel of the Boise River, where the line between sections 15 and 16 in Township 3 north (T3N), range 4 east (R4E), crosses said Boise River; thence, west down the center of the channel of the Boise River to a point opposite the mouth of More's Creek; thence, in a straight line north 44 degrees and 38 minutes west until the said line intersects the north line T5N (12 Ter. Ses. 67); thence west to the northwest corner T5N, R1W.</p> <p><i>Western Boundary</i>—Thence, south to the northwest corner of T3N, R1W; thence east to the northwest corner of section 4 of T3N, R1W; thence south to the southeast corner of section 32 of T2N, R1W; thence, west to the northwest corner of T1N, R1W; thence, south to the southwest corner of section 32 of T2N, R1W; thence, west to the northwest corner of T1N, R1W; thence south to the southwest corner of T1N, R1W.</p> <p><i>Southern Boundary</i>—Thence, east to the southwest corner of section 33 of T1N, R4E.</p> <p><i>Eastern Boundary</i>—Thence, north along the north and south center line of Townships T1N, R4E, T2N, R4E, and T3N, R4E, Boise Meridian to the beginning point in the center of the channel of the Boise River.</p>				
Remainder of AQCR 64 .....	11/15/90	Unclassifiable..		

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[FR Doc. 03-856 Filed 1-15-03; 8:45 am]  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**  
[OAR-2002-0047; FRL-7418-2]  
RIN 2060-AH13

**National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final rule.

**SUMMARY:** This action promulgates national emission standards for hazardous air pollutants (NESHAP) for municipal solid waste (MSW) landfills. The final rule is applicable to both major and area sources and contains the same requirements as the Emission Guidelines and New Source Performance Standards (EG/NSPS). The

final rule adds startup, shutdown, and malfunction (SSM) requirements, adds operating condition deviations for out-of-bounds monitoring parameters, requires timely control of bioreactor landfills, and changes the reporting frequency for one type of report.

The final rule fulfills the requirements of section 112(d) of the Clean Air Act (CAA), which requires the Administrator to regulate emissions of hazardous air pollutants (HAP) listed in section 112(b), and helps implement the Urban Air Toxics Strategy developed under section 112(k) of the CAA. The intent of the standards is to protect the public health by requiring new and existing sources to control emissions of HAP to the level reflecting the maximum achievable control technology (MACT).

The HAP emitted by MSW landfills include, but are not limited to, vinyl chloride, ethyl benzene, toluene, and benzene. Each of the HAP emitted from MSW landfills can cause adverse health effects provided sufficient exposure. For example, vinyl chloride can adversely affect the central nervous system and

has been shown to increase the risk of liver cancer in humans, while benzene is known to cause leukemia in humans.

**EFFECTIVE DATE:** January 16, 2003.

**ADDRESSES:** Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** For information concerning applicability and rule determinations, contact your State or local regulatory agency representative or the appropriate EPA Regional Office representative. For information concerning the development of the final rule, contact Ms. JoLynn Collins, Waste and Chemical Processes Group, Emission Standards Division (C439-03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541-5671, facsimile number (919) 541-0246, electronic mail address [collins.jolynn@epa.gov](mailto:collins.jolynn@epa.gov).

**SUPPLEMENTARY INFORMATION:** *Regulated Entities.* Categories and entities potentially regulated by this action:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Industry: Air and water resource and solid waste management.	924110	9511	Solid waste landfills.
Industry: Refuse systems—solid waste landfills .....	562212	4953	Solid waste landfills.

Category	NAICS code	SIC code	Examples of potentially regulated entities
State, local, and tribal government agencies .....	562212 924110	4953	Solid waste landfills; Air and water resource and solid waste management.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in sections 63.1935 and 63.1940 of subpart AAAA. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**Docket.** We have established an official public docket for this action under Docket ID No. OAR-2002-0047. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**Electronic Docket Access.** You may access the final rule electronically through the EPA Internet under the **"Federal Register"** listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility in the above paragraph entitled "Docket." Once in the system, select

"search," then key in the appropriate docket identification number.

**Worldwide Web (WWW).** In addition to being available in the docket, an electronic copy of the final rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

**Judicial Review.** The NESHAP for MSW landfills was proposed on November 7, 2000 (65 FR 66672). A supplemental proposal with additional bioreactor provisions was published on May 23, 2002 (67 FR 36460). The final rule announces the EPA's final decision. Under section 307(b)(1) of the CAA, judicial review of the final rule is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by March 17, 2003. Only those objections to the final rule which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of the final rule may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

**Outline.** The information presented in the preamble is organized as follows:

- I. Introduction and Background Information
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  - B. What Criteria Are Used in the Development of NESHAP?
  - C. What Are the Health Effects Associated With Municipal Solid Waste Landfills?
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- V. Administrative Requirements
  - A. Executive Order 12866, Regulatory Planning and Review
  - B. Executive Order 13132, Federalism
  - C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments
  - D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks
  - E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - F. Unfunded Mandates Reform Act (UMRA) of 1995
  - G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 United States Code (U.S.C.) 601, *et seq.*
  - H. Paperwork Reduction Act
  - I. National Technology Transfer and Advancement Act
  - J. Congressional Review Act

**I. Introduction and Background Information**

**A. What Is the Source of Authority for Development of NESHAP?**

Under section 112(d) of the CAA, we are required to regulate major sources of 188 HAP listed in section 112(b) of the CAA. On July 16, 1992 (57 FR 31576), we published a list of industrial source categories, which included MSW landfills, that emit one or more of these HAP. We must promulgate standards for the control of emissions of HAP from both new and existing major source MSW landfills.

Under section 112(k) of the CAA, we developed a strategy to control emissions of HAP from area sources in urban areas, identifying 33 HAP that present the greatest threat to public health in the largest number of urban areas as the result of emissions from area sources. Municipal solid waste landfills were listed on July 19, 1999, as an area source category to be regulated pursuant to section 112(k) because 13 of the listed HAP are emitted from MSW landfills (64 FR 38706).

**B. What Criteria Are Used in the Development of NESHAP?**

The CAA requires NESHAP to reflect the maximum degree of reduction in

emissions of HAP that is achievable for new and existing major sources. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. The MACT floor ensures that all major HAP emissions sources achieve the level of control already achieved by the better-controlled and lower-emitting sources in each category. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emissions limitation achieved by the best-performing 12 percent of existing sources (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also must consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost, non-air-quality health and environmental impacts, and energy requirements.

Finally, the CAA allows NESHAP to reflect an alternative standard for area sources. The alternative standard provides for the use of generally available control technologies (GACT) or management practices to reduce emissions of HAP.

### *C. What Are the Health Effects Associated With Municipal Solid Waste Landfills?*

The final rule ensures reductions of emissions of nearly 30 HAP including, but not limited to, vinyl chloride, ethyl benzene, toluene, and benzene. Each of the HAP emitted from MSW landfills can cause adverse health effects provided sufficient exposure. For example, vinyl chloride can adversely affect the central nervous system and has been shown to increase the risk of liver cancer in humans, while benzene is known to cause leukemia in humans. Additional discussion of health effects is provided in the proposal (65 FR 66672) and Docket A-98-28. The degree of adverse effects to human health from exposure to these HAP can range from mild to severe. The extent and degree to which the human health effects may be experienced depend on the ambient concentration observed in the area (as influenced by emissions rates, meteorological conditions, and terrain); the frequency and duration of exposures; characteristics of exposed individuals (genetics, age, preexisting

health conditions, and lifestyle), which vary significantly with the population; and pollutant-specific characteristics (toxicity, half-life in the environment, bioaccumulation, and persistence). We recognize that health risks are significantly reduced at landfills that collect and control landfill gas.

## **II. Summary of the NESHAP**

The final rule contains the same requirements as the EG/NSPS (40 CFR part 60, subparts Cc and WWW), plus SSM definition and reporting of deviations for out-of-range monitoring parameters. Also, the final rule requires compliance reporting every 6 months while the EG/NSPS requires annual reporting. For bioreactors at large landfills, the NESHAP also require timely installation of controls, and allows timely removal of controls.

### *A. What Source Categories Are Affected by the Final Rule?*

The final rule applies to all MSW landfills that are major sources or are collocated with a major source, and to some landfills that are area sources. We estimate that all MSW landfills that are major sources of HAP (*i.e.*, with a potential to emit at least 10 tons per year (tpy) of any individual HAP or 25 tpy total HAP) will also meet the EG/NSPS criteria for installing collection and control systems (*i.e.*, have a design capacity equal to or greater than 2.5 million megagrams (Mg) and 2.5 million cubic meters (m<sup>3</sup>) and have estimated uncontrolled emissions of 50 megagrams per year (Mg/yr) nonmethane organic compound (NMOC)). All major source landfills, including those operated partially or completely as bioreactors, are covered by the final rule and, in addition to EG/NSPS control requirements, are subject to the additional SSM, deviation, and compliance reporting requirements of the NESHAP. Landfills that do not themselves emit major source levels of HAP but that are collocated with major sources of HAP are also covered by the final rule. However, if these landfills are smaller than the EG/NSPS thresholds, they have fewer requirements under the NESHAP, as previously discussed in this preamble.

In addition, as previously discussed in this preamble, landfills have been listed as an area source category pursuant to section 112(k). The final rule applies to area source landfills if they have a design capacity equal to or greater than 2.5 million Mg and 2.5 million m<sup>3</sup>, and they have estimated uncontrolled emissions of 50 Mg/yr NMOC or more, or are operated as a bioreactor. The final rule does not apply

to area source landfills (including bioreactors) with a design capacity less than 2.5 million Mg or 2.5 million m<sup>3</sup>. It also does not apply to conventional area source landfills that have estimated uncontrolled emissions of less than 50 Mg/yr NMOC. (The EG/NSPS require landfills that meet the design capacity criteria to periodically calculate uncontrolled annual NMOC emissions. If an area source landfill that currently has estimated uncontrolled emissions less than 50 Mg/yr increases to 50 Mg/yr in the future, it will become subject to the NESHAP at that time.) For a complete description of applicability, see section III.A of this preamble and sections 63.1935 through 63.1945 of the final rule.

### *B. What Is the Affected Source?*

The affected source is the entire MSW landfill in a contiguous geographical space where household waste is placed in or on the land and consists of one or more cells that are under common ownership or control. The facility may receive household waste as well as other types of Resource Conservation and Recovery Act (RCRA) Subtitle D waste. The affected source may be operated as a conventional landfill, or it may be operated completely or partially as a bioreactor. To be an affected source, the landfill must have accepted waste since November 8, 1987, or have additional capacity for waste deposition, and must be either: (1) A major source of HAP; (2) collocated with a major source of HAP; (3) an area source with a design capacity greater than or equal to 2.5 million Mg and 2.5 million m<sup>3</sup> and with estimated uncontrolled NMOC emissions equal to or greater than 50 Mg/yr; or (4) an active area source landfill with a design capacity greater than or equal to 2.5 million Mg and 2.5 million m<sup>3</sup> that operates an anaerobic bioreactor, as defined in the final rule. The bioreactor provisions do not apply to closed landfills.

### *C. What Do the Standards Require?*

Major and area source landfills with a design capacity of greater than or equal to 2.5 million Mg and 2.5 million m<sup>3</sup>, and with estimated uncontrolled NMOC emissions of at least 50 Mg/yr, would continue to be subject to the EG/NSPS as applicable, plus additional requirements imposed by the final rule. These requirements also apply to bioreactors within active landfills at both major and area sources if the landfill meets the design capacity criteria.

You are required to meet the SSM requirements that are listed in the general provisions to 40 CFR part 63.

You must develop and implement a written SSM plan that describes in detail the procedures for operating and maintaining the collection and control system and the continuous monitoring system (CMS) during periods of SSM (section 63.6(e)(3)). There are also recordkeeping and reporting requirements for SSM incidents.

The final rule also requires you to operate the control device within the operating parameter boundaries as described in 40 CFR 60.758(c)(1) and to continuously monitor control device operating parameters. Compliance with the operating conditions is demonstrated when monitoring data show that the gas control devices are operated within the established operating parameter range. Compliance also occurs when data quality is sufficient to constitute a valid hour of data in a 3-hour block period. Deviations occur when a source's 3-hour average falls outside the established boundaries. A deviation also occurs when more than 1 hour in a 3-hour average is considered invalid. To be considered a valid hour, measured values must be available for at least three 15-minute periods within the hour. If such a deviation occurs, then the source may be in violation of operating conditions (that is, in violation of proper operation and maintenance of a control device).

With one exception, the final rule also requires you to submit the reports that are specified in 40 CFR part 60, subpart WWW, or in the Federal plan, the EPA-approved State plan, or Tribal plan that implements 40 CFR part 60 subpart Cc, whichever is applicable. As an exception, the report required in section 60.757(f) must be submitted every 6 months rather than annually. The report pertains to the control device operating parameter value and the duration of time that control devices were operating in out-of-bounds conditions, the duration of periods when the landfill gas stream was diverted from the control device(s), the location of areas that exceed the 500 parts per million methane concentration limit, and the dates of installation and location of each added well or collection system expansion.

If a landfill is subject to the final rule because it is collocated with a major source and the landfill has a design capacity less than 2.5 million Mg or 2.5 million m<sup>3</sup>, the landfill must comply with the applicable EG/NSPS requirements (i.e., it must submit a design capacity report). The landfill would not be subject to additional control and reporting requirements under the NESHAP.

Note that while area source landfills that have a design capacity less than 2.5 million Mg or 2.5 million m<sup>3</sup>, or estimated uncontrolled NMOC emissions less than 50 Mg/yr (for landfills other than bioreactors) are not subject to the final rule, they must continue to comply with the provisions of the NSPS or State, tribal, or Federal plan that implements the EG, as applicable.

#### *D. When Must I Begin Complying With the Standards?*

If your landfill is a new affected source, you must comply with the final rule by January 16, 2003 or at the time you begin operating, whichever occurs last. The final rule requires you to comply with the NSPS at that time. For the requirements in the final rule that are over and above the NSPS, you must begin complying by the date your new major or area source landfill is required to install a collection and control system by the NSPS. If you own or operate a bioreactor at a landfill that is a new affected source, then you are required to install the gas collection and control system in the bioreactor prior to initiating liquids addition, regardless of whether the landfill emissions rate equals or exceeds the estimated uncontrolled emissions rate of 50 Mg/yr specified in the EG/NSPS. Startup of the collection and control system is required within 180 days after initiating liquids addition or within 180 days after reaching 40 percent moisture content within the bioreactor, whichever is later.

If your landfill is an existing affected source, then you must comply with the final rule by January 16, 2004. The final rule requires you to comply with the NSPS or Federal, State, or Tribal plan that implements the EG, whichever applies to your landfill, at that time. You must begin complying with the additional requirements of the final rule (that are over and above the EG/NSPS) by January 16, 2004, or the date your landfill is required to install a collection and control system by the NSPS or Federal, State, or Tribal plan that implements the EG, whichever is later. If your landfill has a bioreactor and the landfill is an existing affected source, then you must install and begin operating a collection and control system for the bioreactor within 3 years after publication of the final rule unless earlier control is already required by the EG/NSPS. You are required to conduct a performance test and report the results within 180 days after startup of the bioreactor collection and control system. If an existing source landfill installs and begins to operate a

bioreactor at a date later than 3 years after the final rule is published, you must install a collection and control system for the bioreactor before the initiation of liquids addition. The control system is required to begin operation within 180 days after the first date of liquids addition or within 180 days after reaching 40 percent moisture content. See sections 63.1935 through 63.1947 for the complete requirements regarding compliance times.

#### *E. How Are New and Existing Sources Defined Differently for Purposes of the NESHAP and for the EG/NSPS?*

For the final rule, a new affected source is one that commenced construction or reconstruction (defined in 40 CFR part 63, subpart A) after November 7, 2000. An existing affected source is any affected source that is not a new source, that is, any source that commenced construction on or before November 7, 2000, and accepted waste any time since November 8, 1987, or has additional capacity for waste deposition.

For purposes of the NSPS, a new source is each MSW landfill for which construction, modification, or reconstruction commenced on or after May 30, 1991. For purposes of the EG, an existing source is any MSW landfill that is not a new source and has accepted waste since November 8, 1987, or has capacity for additional waste deposition.

Because regulatory impacts can vary based on these different definitions, it is important for sources to know how they are defined and the regulatory implications for each rule that applies to them. The regulatory implications of new versus existing source determination for sources affected by the EG/NSPS are well understood, unaffected by the final rule, and, thus, will not be discussed further here. The regulatory implications of new versus existing source determination for sources affected by the final rule are limited to compliance timing and are previously discussed in this preamble.

#### *F. How Must I Demonstrate Compliance?*

You must demonstrate compliance by meeting the applicable requirements in the EG/NSPS and, if you are required to install a collection and control system, by maintaining monitoring parameters within acceptable ranges. In addition, you must submit reports every 6 months which would include any notifications of deviations from the monitoring parameter values. You must develop and implement a written SSM plan according to the provisions in section

63.6(e)(3). If you take action during a SSM event, you must keep records for that SSM event which demonstrate that you followed the procedures specified in the SSM plan. You must submit a report every 6 months if the action is consistent with the SSM plan. However, if the action is not consistent with the SSM plan, you must notify EPA within 2 days of the SSM event and must follow up with a letter within 7 days of the event (section 63.10(d)(5)(ii)).

#### *G. What Are the Additional Requirements for Bioreactors?*

A bioreactor is defined as a MSW landfill or portion of a MSW landfill where any liquid other than leachate (leachate includes landfill gas condensate) is added in a controlled fashion into the waste mass (often in combination with recirculating leachate) to reach a minimum average moisture content of at least 40 percent by weight to accelerate or enhance the anaerobic (without oxygen) biodegradation of the waste. We consider landfill gas condensate to be a constituent of leachate. Addition of wastewater sludges to the waste mass is considered addition of liquids other than leachate. Bioreactors at active landfills that meet the design capacity criteria are required to install and begin operating gas collection and control systems in a timely manner as previously discussed in this preamble. The timing for extending the collection and control system into new cells or areas of the bioreactor is also different from conventional landfills. Once control of your bioreactor is required, you must install collection and control systems in new areas or cells of the bioreactor prior to initiating liquids addition to that area, cell, or group of cells. Controls may be removed from the bioreactor portion of the landfill either:

(1) When the criteria for control removal specified in the landfills EG/NSPS are met, or (2) When the bioreactor is permanently closed, liquids addition has ceased, and liquids have not been added to the bioreactor for at least 1 year.

At some landfills, a portion of the landfill is a bioreactor and the remainder is designed and operated as a conventional landfill. In these situations, the control requirements and the timing of control installation for the conventional portion of the landfill do not change. You must continue to use the equations and factors in the EG/NSPS to calculate the annual estimated uncontrolled NMOC emissions for your landfill as a whole (including the total waste placed in the bioreactor area and the conventional area). When your

calculated uncontrolled NMOC emissions equal or exceed 50 Mg/yr, then you must install a collection and control system for the conventional portions of the landfill according to the schedule in the NSPS, or the applicable State, Tribal, or Federal plan that implements the EG. Only the bioreactor portion of the landfill must meet the control schedule for bioreactors.

Note that as a general rule, it is currently difficult for an owner/operator of a MSW landfill to operate a large bioreactor as defined in the final rule. This is because of the Federal criteria regulating MSW landfills, specifically 40 CFR part 258.28 which prohibits the addition of liquids other than leachate and gas condensate to a landfill and 40 CFR part 258.26 which limits the entry of rainwater into MSW landfills through specified run-on control systems. A few landfills have gained site specific variances under Project XL to operate landfill bioreactors.

However, on June 10, 2002, EPA proposed a revision to 40 CFR part 258 that would allow the Director of an approved State to issue a research, development, and demonstration (RD&D) permit for a MSW landfill (67 FR 39662). That proposed RD&D rule would allow the States to grant variances to certain parts of the MSW landfill criteria (40 CFR part 258) through the issuance of RD&D permits. As a result, once the RD&D rule becomes final and an approved State integrates the new Federal regulations, the Director of an approved State may issue permits which could potentially allow for the operation of a bioreactor landfill as long as there is no increased risk to human health and the environment (as compared to a MSW landfill permitted under the existing 40 CFR part 258 criteria). Therefore, once the proposed rule allowing RD&D permits for MSW landfills becomes final, we expect the number of bioreactor landfills to increase.

### **III. Summary of Public Comments and Responses**

This section of the preamble is a brief summary of the major public comments received in response to the original proposal and the supplemental proposal for the MSW landfills NESHAP, and changes resulting from the comments. Additional comments are summarized in the document "Municipal Solid Waste Landfills: Background Information Document for National Emission Standards for Hazardous Air Pollutants—Public Comments and Responses." The document contains a full report of all comments received and

our responses. The document may be found in Docket A-98-28.

#### *A. Applicability of the NESHAP*

*Comment:* Two commenters recommended that additional MACT requirements apply only to major sources and that EPA require no controls for area sources.

*Response:* We believe regulation of area sources is appropriate under section 112(k) of the CAA. Under Section 112(k), we developed a strategy to control emissions of HAP from area sources in urban areas, identifying 33 HAP that present the greatest threat to public health in the largest number of urban areas as the result of emissions from area sources. Municipal solid waste landfills were listed on July 19, 1999, as an area source category to be regulated pursuant to section 112(k) because 13 of the listed HAP are emitted from MSW landfills (64 FR 38706). Section 112(k) requires that sufficient categories of area sources be regulated to assure that sources accounting for at least 90 percent of the aggregate emissions of each of the HAP identified pursuant to 112(k) as being the greatest threat to health in urban areas are subject to standards. As we stated at proposal, we believe it is necessary to regulate some area MSW landfills to meet this requirement of section 112(k). Therefore, we have not changed this aspect of the final rule's applicability. (Note that the bioreactor provisions of the final rule apply to major and area sources that exceed the EG/NSPS design capacity criteria of 2.5 million Mg and 2.5 million m<sup>3</sup> and operate as a bioreactor regardless of whether they meet or exceed the EG/NSPS estimated uncontrolled NMOC emissions criteria of 50 Mg/yr. See sections II and III.C of this preamble for further information on bioreactor applicability and requirements.)

*Comment:* A commenter expressed concern that small landfills that are collocated with major source facilities become subject to EG/NSPS control under the final rule.

*Response:* Small landfills that are collocated with major source facilities are subject to the final rule. The final rule requires them to comply with the EG/NSPS. If the design capacity of the collocated landfills is less than 2.5 million Mg or 2.5 million m<sup>3</sup>, the landfills comply by submitting a design capacity report as required by the EG/NSPS. The final rule language has been revised to clarify that the final rule applies to these landfills but does not extend the additional final rule requirements and EG/NSPS collection and control requirements to landfills

that do not meet the control device applicability thresholds of the EG/NSPS.

*Comment:* Several other comments included suggested changes to proposed rule applicability language.

*Response:* We have revised sections 63.1935, 63.1940, and 63.1945 to clarify the application of the final rule to major sources, area sources and smaller landfills collocated with major sources, as well as identify the affected source for the final rule and clarify the timing of the regulatory requirements. We also added language to section 63.1955 to further explain that landfills required to install a collection and control system under NSPS, Federal, State or tribal plans that implement the EG must also meet the requirements in sections 63.1960 through 63.1980 of the final rule.

*Comment:* Two commenters requested clarification of the timing of the final rule regulatory requirements. They pointed out that the proposal preamble indicated that the additional requirements of the final rule (compared to the NSPS) do not take effect until the landfill is required to install controls under the EG/NSPS, but the regulation language was not clear.

*Response:* In response to this comment, we revised section 63.1945 to be consistent with our intent at proposal. The wording of this section continues to require that new sources comply with the final rule on the date of publication of the final rule or at the time they begin operation, whichever is later; and that existing sources comply with the final rule by January 16, 2004. At that time, the source is required to comply with the NSPS or the Federal, State, or tribal plan that implements the EG. We have added language to this section to clarify when landfills must comply with certain requirements within the final rule. New affected sources must comply with the additional final rule requirements (such as the SSM plan and the semiannual reporting of deviations) on the date the landfill is required to install collection and control systems under the NSPS. Existing affected sources must comply with the additional final rule requirements on the date the landfill is required to install collection and control systems under the NSPS, Federal, State or tribal plan or 1 year after publication of the final rule, whichever is later.

#### B. Major Source Determination

*Comment:* Several commenters expressed concern that we overestimated the number of major source landfills. The commenters contend that AP-42 emissions factors

are incorrect and provide overestimates of landfill gas emissions, that EG/NSPS controls should be taken into account when determining major source status of landfills, and that using NMOC as a HAP surrogate is too arbitrary.

*Response:* We respond that we used the best method for calculating emissions that is currently available and accepted, which is the current version of AP-42. The EPA program responsible for AP-42 factors is reviewing existing reports and technical data as well as undertaking a landfill testing program to collect additional HAP data. Currently, the data collection and analysis are not yet complete, and could not be completed prior to promulgation of the final rule. When we update the AP-42 chapter on landfill emissions, we will consider all relevant data. However, any update of AP-42 or adjustment of calculation procedures would not affect our regulatory decisions in developing the final rule. We find that the MACT floor is the EG/NSPS level of control. The floor is based on the current level of control at major and synthetic area sources and would not change if there were somewhat fewer or more major sources than previously estimated.

We agree that in determining whether a source is major, enforceable control requirements should be considered. The statement in the proposal preamble identifying 1,140 facilities as major sources may not have been clear. The intent was to say that based on estimates of maximum uncontrolled emissions, 1,140 landfills have potential emissions greater than 10 tpy individual HAP or 25 tpy of a combination of HAP. Some of the 1,140 landfills are major sources and others are "synthetic area" sources (sources that would otherwise be major if not for enforceable emissions controls). Both major and synthetic area sources were correctly included in the MACT floor determination. The CAA does not suggest we exclude a control technology from consideration in the MACT floor because it is so effective it reduces emissions from a source such that the source is no longer a major source of HAP.

To determine major source status for rule applicability, a landfill owner/operator would consider enforceable control requirements such as the NSPS. Since the landfills NESHAP requirements for area sources that meet the NSPS capacity criteria and have uncontrolled NMOC emissions of 50 Mg/yr or greater are the same as for major sources, this classification would not change the control or reporting requirements for the landfill. It should be noted that the final rule has not redefined major source. Major source

status is determined according to the NESHAP general provisions definition. Nonmethane organic compounds are a surrogate for HAP control, not for whether a facility is a major source. Nonmethane organic compounds are an appropriate surrogate for HAP control because all HAP regulated by the final rule are contained in the NMOC portion of the landfill gas. Landfill owners/operators are already required to estimate NMOC under the EG/NSPS, and it is not necessary to increase the burden by requiring specific HAP measurements as well.

#### C. Bioreactors

*Comment:* We received several comments about the timing of startup of the gas collection and control system. Three commenters expressed concern that due to a wide range of possible development scenarios, commencing operation of the gas collection and control system within 90 days of liquids addition may not be appropriate in all cases. Two of the commenters stated that the generation rates of landfill gas during the initial development phases of bioreactors are a function of many factors and substantial quantities of recoverable landfill gas may not be available due to low waste acceptance rates, hybrid bioreactor operations, high inorganic waste fractions, or low liquids addition rates where gas generation is likely to be similar to that of conventional landfills. Under these circumstances, premature startup of the gas control system may result in significant volumes of air being introduced into the bioreactor, thus killing methane-producing bacteria. These commenters recommended extending the startup time frame to 180 days or establishing a process for waiving or delaying the startup date if local conditions warrant.

*Response:* In response to this comment, we have changed the final rule to allow 180 days instead of 90 days to begin operation of the collection and control system. We are aware that bioreactors may experience variable emissions rates upon initial liquids addition due to site-specific factors such as those described by the commenters. Furthermore, gas collection systems for bioreactors are site-specific and are likely to use newer designs, so operators may require time to gain experience and make operational adjustments to their systems. The 180 day period will allow time for landfill operators to adjust their collection systems such that they can achieve continuous, stable collection and control system operation.

*Comment:* Four commenters requested clarification as to whether the

rule was meant to require the operation of the gas collection and control system within 90 days after the initial liquids addition or within 90 days after the moisture content has reached 40 percent. Commenters stated that they believed the intent was to require operation of the gas collection and control system after the moisture content reached 40 percent. The commenters stated that it may take longer than 90 days of liquids addition to reach a moisture content of 40 percent.

*Response:* It was our intent that attaining 40 percent moisture triggers the operation of the control system, and not merely the introduction of liquids. If operation of the control system is based on the time of liquids addition and the landfill has not reached 40 percent moisture content within 90 days, then the rule (as proposed) would be requiring collection and control to be installed and operated prior to the landfill meeting the definition of a bioreactor. We have revised the final rule to clarify that the operation of the collection and control system is required within 180 days after the landfill starts liquids addition or within 180 days after the bioreactor has reached 40 percent moisture content (i.e. 180 days after the landfill has met the definition of bioreactor), whichever is later. Landfills must use the procedures in section 63.1980(g) and (h) to determine when 40 percent moisture content is reached. (No calculation is needed if you start operating the collection and control system within 180 days after the initial liquids addition.) Installation of the collection and control system is still required prior to liquids addition, as required in the supplemental proposal.

*Comment:* We received several comments pertaining to the exclusion of landfills that recirculate leachate and do not add any other liquids from the definition of a bioreactor landfill. Three commenters who supported the exclusion stated that liquids addition other than that provided by leachate recirculation is normally needed to achieve optimum moisture for bioreactors. Many landfills recirculate leachate as part of their leachate management system without creating bioreactor conditions. A commenter who opposed the exclusion contended that a landfill in a relatively moist climate could sustain an effective bioreactor operation on leachate recirculation alone. This commenter pointed out that there were odor problems at landfills in his State that began recirculating leachate without a collection and control system. The

commenter stated that his State now requires collection and control for all landfills that recirculate leachate. The commenter also expressed concern that landfills recirculating leachate only may reach the 40 percent moisture level in the waste by recirculating leachate from the entire landfill into a single bioreactor cell. Another commenter who opposed the exclusion contended that minimal data from landfills recirculating leachate has been collected to allow for the exclusion.

*Response:* We have not changed the bioreactor definition. A very small percentage of bioreactors in moist climates would reach moisture content of 40 percent with leachate recirculation only. Due to variations in rainfall throughout the year, it would be difficult to consistently maintain a high moisture content in the waste to function as a fully operational bioreactor. We expect that landfill owners that decide to create bioreactors in the future will typically plan to operate a large area as a bioreactor to achieve potential benefits such as earlier stabilization of waste, extended use of current sites and reduced need for new sites. Liquids addition would be needed to maintain such bioreactors.

It would be a large and unnecessary burden to require potentially hundreds of landfills that recirculate leachate, but do not add any other liquids, to calculate their percent moisture content and determine if they are a bioreactor, when we expect that they will not meet the 40 percent moisture criteria in the definition of a bioreactor. These landfills would still be subject to the final rule and EG/NSPS control requirements for conventional landfills, which will require gas collection and control after their estimated uncontrolled NMOC emissions reach 50 Mg/yr. State, local, or tribal agencies may develop more stringent State or local regulations for landfills recirculating leachate in cases where odor or air emissions warrant active landfill gas collection and control.

*Comment:* One commenter pointed out that the potential exists for smaller bioreactor landfills that add liquids, to generate significant air emissions that warrant timely installation of gas collection and control systems. The commenter recommended requiring control of bioreactors at landfills with design capacities less than 2.5 million Mg or 2.5 million m<sup>3</sup>.

*Response:* We have not changed our conclusion since proposal. In determining GACT for area sources, we decided not to require control at small area source conventional or bioreactor landfills. While bioreactors generate

larger amounts of landfill gas early in their life, we expect that their lifetime total landfill gas generation potential would not be significantly greater than a conventional landfill accepting the same total amount of waste. Therefore, potential emissions reductions from control of bioreactors would be similar to potential long-term emissions reductions from control of small conventional landfills. Requiring bioreactors at small landfills (i.e., landfills with design capacities less than 2.5 million Mg or 2.5 million m<sup>3</sup>) to install controls would result in additional control costs because they are not required to install controls by the EG/NSPS. The design capacity exemption excludes those landfills that can least afford the costs of collection and control systems including small businesses and, particularly, municipalities. Other reasons for exempting small landfills are described in the proposed landfills NESHAP (65 FR 66677, November 7, 2000) and also apply to bioreactors.

*Comment:* Four commenters encouraged us to include aerobic bioreactor operations by imposing the anaerobic bioreactor emissions requirements on aerobic bioreactor landfills. Two of these commenters provide references to available literature on MSW composting. They suggested that controls for aerobic bioreactor landfills may be warranted, although one of these commenters concluded that there is not enough scientifically valid data to develop a MACT standard for aerobic bioreactor landfills. Five other commenters agreed there is limited data, especially HAP emissions data, and believe it is important to exclude aerobic bioreactors at this time.

*Response:* The references provided for composting operations are not applicable because composting of MSW is not the same as operating an aerobic bioreactor within a MSW landfill. We know of no full scale aerobic bioreactors in operation in the United States, and an insufficient amount of aerobic landfill data are available to properly characterize HAP emissions from aerobic bioreactors. We expect a significant number of aerobic bioreactors will not be built in the next several years (in contrast to the trend for anaerobic bioreactors). For these reasons, we have determined that it is not appropriate to include aerobic bioreactors in the bioreactor definition or related timing requirements. Portions of a landfill that are operated as aerobic bioreactors would continue to be subject to the EG/NSPS and the final rule requirements for conventional landfills. Under section 112(f) of the CAA, we

will evaluate residual risks and promulgate standards to address residual risks within 8 years of promulgation of the final rule. In addition, section 112(d)(6) requires review of the final rule every 8 years. At that time, we will consider any new information on the prevalence and emissions of aerobic bioreactors to determine if additional requirements are necessary.

#### D. Mercury

*Comment:* Four commenters questioned the reliability of the available mercury data. Some commenters quoted mercury emissions tests that showed mercury emissions from MSW landfills to be insignificant.

*Response:* We considered data from a number of studies, including one specifically mentioned by the commenters, prior to proposal. We found insufficient data to adequately characterize the concentrations of mercury in landfill gas or determine their significance. Based on the available information, we concluded that the MACT floor for mercury is no emissions reductions and because there are no alternatives above that floor, the MACT standard is also no reduction in emissions.

*Comment:* Other commenters wrote in support of the cooperative efforts of EPA and the Environmental Research and Education Foundation to conduct tests for HAP metals such as mercury in landfill gas and emissions from gas combustion. The commenters suggested waiting until the test results are complete before making any decision on mercury controls. Another commenter also asked us to clarify the level of mercury emissions from MSW landfill gas and requested that we investigate beyond-the-floor control options.

*Response:* We find that the currently available data support the promulgation of the rulemaking without a mercury emissions limit. Because there are no control devices, pollution prevention practices or other techniques to reduce landfill mercury emissions, we could not identify any beyond-the-floor control options, and we consider the MACT for new and existing landfills to be no reduction in mercury emissions.

#### E. Title V Operating Permits

*Comment:* A commenter recommended that we delete the requirement mandating that area sources be required to obtain a title V permit and instead allow part 60 to address the permitting of area source landfills. The commenter further suggested that if we retain the requirement of permitting area source

landfills, that we justify why area source landfills must be permitted.

*Response:* In response to that comment, title V requirements included in § 63.1935 at proposal have been deleted. We further respond that section 502(a) of the CAA requires any source, including an area source, subject to standards or regulations under section 111 or 112 of the CAA to operate in compliance with a title V permit after the effective date of any title V permits program. This section states that the Administrator may promulgate regulations to exempt one or more source categories, in whole or in part, from the requirements of the section if the Administrator finds that compliance with title V requirements is impracticable, infeasible, or unnecessarily burdensome on such categories. Thus, we do not need to justify requiring title V permits. The CAA mandates criteria that must be met to justify an exemption for any category of sources. According to section 502(a), however, the Administrator may not exempt any major source from the requirements of title V.

Although section 502(a) requires that area sources subject to regulations under section 111 or 112 be permitted unless the test in this section is met (i.e., the Administrator finds that compliance with title V permitting requirements is impracticable, infeasible, or unnecessarily burdensome), we are not applying this test to the landfills NESHAP.<sup>1</sup> Rather, consistent with what the commenter suggested, EPA is allowing the EG/NSPS for MSW landfills to address the permitting requirements for area source landfills. This approach is justified because the same universe of area source landfills would have been required to apply for a title V permit under the final rule (if the final rule were promulgated as proposed) as is currently subject to title V permitting requirements under the NSPS for landfills and whatever plan is used to implement 40 CFR part 60, subpart Cc in an area (i.e., an EPA approved and effective section 111(d) State or tribal plan for landfills or the landfills Federal plan (40 CFR part 62, subpart GGG)). Moreover, most area

<sup>1</sup> It is important to note that the determination regarding the permitting of area sources under this NESHAP does not affect the permitting of area sources under other section 111 or 112 standards. Rather, to exempt area sources under either a section 111 or 112 standard, the test in section 502(a) must be met. If commenters choose to try and meet this test when commenting on a proposed section 111 or 112 standard, they must submit comments which document in detail the ways in which title V requirements are impracticable, infeasible, or unnecessarily burdensome for the source category in question.

source landfills which have a design capacity equal to or greater than 2.5 million Mg and 2.5 million m<sup>3</sup> have already been required to apply for a title V permit due to either the NSPS for landfills, an EPA approved and effective section 111(d) State or tribal plan for landfills, or the landfills Federal plan. See 40 CFR 60.752(c), 60.32c(c), and 62.14352(e). See also the "Clarification of Title V Permitting Requirements" section of the EG/NSPS direct final rule amendments for MSW Landfills (63 FR 32743, 32746, June 16, 1998). In fact, unless the owner/operator of a MSW landfill only recently commenced construction of the landfill and has not yet been required to file a design capacity report (which the NSPS requires within 90 days after the owner/operator commences construction), all area source landfills of the design capacity noted above and which meet the definition of new or existing under the EG/NSPS should have already applied for a title V permit. As a result, EPA believes that it is unnecessary for area sources to be required to apply for a title V permit as a result of the landfills NESHAP.

If a MSW landfill is a major source or is a part of a major source as defined under one or more of title V's three major source definitions (section 112, section 302, and part D of title I of the CAA),<sup>2</sup> a title V application from such a source may be due even earlier than the deadlines established by 40 CFR part 60, subpart WWW, any EPA approved and effective section 111(d) State or tribal plan, or the landfills Federal plan. When a source is subject to title V for more than one reason (e.g., meeting the title V applicability criteria in subpart WWW as well as having the potential to emit one or more pollutants at major source levels), the 12-month timeframe (or earlier if required by the title V permitting authority) for submitting a title V application is triggered by the requirement which first causes the source to become subject to title V. See CAA section 503(c) and 40 CFR 70.3(a) and (b), 70.5(a)(1), 71.3(a) and (b), and 71.5(a)(1). See also the "Clarification of Title V Permitting Requirements" section of the EG/NSPS direct final rule for MSW Landfills (63 FR 32743, 32746, June 16, 1998).<sup>3</sup>

<sup>2</sup> For information on aggregating emissions units to determine what is a source under title V, see the definition of *major source* in 40 CFR 70.2, 71.2, and 63.2. Nothing in this subpart revises how affected sources are aggregated for purposes of determining whether an affected source is a part of an area, nonmajor, or major source under any provisions of the CAA or EPA's regulations.

<sup>3</sup> Consistent with the above, it is important to note that an application deadline once established

Given that most area source landfills subject to the final rule are already subject to the requirements of title V, it is important to note the following. In cases where the owner/operator of a landfill has submitted a timely and complete title V application<sup>4</sup>, but the draft title V permit has not yet been released by the permitting authority, the owner/operator must supplement his title V application<sup>5</sup> by incorporating the applicable requirements of the final landfills NESHAP in accordance with 40 CFR 70.5(b) or 71.5(b). Additionally, if a landfill is a major source, or is a part of a major source, and is covered by a title V permit with a remaining permit term of 3 or more years on the promulgation date of the landfills NESHAP, the title V permitting authority must complete a reopening of the source's title V permit to incorporate the requirements of the final rule within 18 months of the promulgation date of the final rule. See CAA section 502(b)(9) and 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i).

*Comment:* Two commenters recommended that we clarify that deviations that are properly addressed in accordance with the SSM plan under the proposed rule will not become violations under any CAA program or permit, such as a title V permit, in which the standard, limitation, prohibition, or other Federally-enforceable requirement is contained. The commenters stated that the proposed rule suggested that any deviations that occur during SSM would not be violations under section 112 if the SSM plan were adequate and followed. The commenters are concerned that such a deviation might be considered a violation under title V and/or the EG/NSPS for MSW landfills.

*Response:* To the extent that a source is in compliance with the applicable

SSM provisions of parts 60 and 63, the source is in compliance with its title V permit with respect to these specific applicable requirements. In terms of the EG/NSPS for landfills, deviations, and, therefore, potential violations, will be defined by the applicable requirements (i.e., 40 CFR part 60, subpart WWW, an EPA approved and effective State or tribal plan, or the landfills Federal plan.)

Furthermore, in response to this comment, section 63.1970 has been removed from the final rule to eliminate any confusion regarding the use of SSM plans. Given that the revisions to the General Provisions for part 63 (67 FR 16582, April 5, 2002) included revisions to 40 CFR 63.6(e), a subsection which addresses SSM plans, and given the other language in the General Provisions for parts 60 and 63, the NSPS for landfills, and the landfills Federal plan relevant to this topic, EPA does not believe a regulatory section regarding the use of SSM plans is needed in the final rule. See 40 CFR 60.11(c), 60.755(e), 63.6(e), 63.6(f)(1), and 62.14354(b).

*Comment:* Two commenters requested a more detailed discussion of which reporting requirements under the final rule would satisfy specific requirements under the title V program. The commenters cited a specific example: the proposed rule requires that the landfill owner/operator notify EPA within 2 days of a SSM event. The commenters questioned whether this requirement would satisfy the prompt reporting requirements of the title V program.

*Response:* As many owners/operators of landfills subject to this subpart will have the requirements of the final rule in their title V permits, any reports submitted for such sources will need to satisfy the reporting requirements of the landfills NESHAP and title V (e.g., type of report, content of report, and frequency of submission.) A permitting authority is not, however, precluded from consolidating required reports as long as all reporting requirements of the landfills NESHAP and title V are met.

We would like to emphasize that under 40 CFR part 70 or 71, any application form, report, compliance certification, or other document required by a permit to be submitted to a permitting authority must contain certification by a responsible official that the statements and information in the document are true, accurate, and complete. See 40 CFR 70.5(d), 70.6(c)(1), 71.5(d), and 71.6(c)(1). Thus, to the extent reports submitted under the final rule are also required by a title V permit to be submitted, they must meet the title

V certification requirement to meet the reporting requirements of title V.

The commenters mentioned a specific requirement in 40 CFR 63.10(d)(5)(ii). This provision states that any time an owner/operator takes an action during a SSM event which is not consistent with the procedures specified in the affected source's SSM plan, the owner/operator shall report the actions taken for that event within 2 working days after commencing actions inconsistent with the plan followed by a letter within 7 working days after the end of the event. The commenters questioned whether this requirement would satisfy the prompt reporting requirements of title V.

In terms of the prompt reporting of deviations, 40 CFR 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Therefore, it is the responsibility of the part 70 permitting authority to determine whether the timing of reports under 40 CFR 63.10(d)(5)(ii) is sufficient to meet the permitting authority's requirements for the prompt reporting of deviations. The permitting authority may decide for a particular source or source category, or as a general matter, to impose more stringent reporting requirements (e.g., type of report, content of report, and frequency of submission) than those specified in the applicable requirement.

#### IV. Summary of the Energy, Environmental, and Economic Impacts

We foresee minimal economic impacts to major sources since all of these landfills are currently required to comply with the EG/NSPS. For such sources, the final rule will only impose a requirement to prepare a SSM plan, recordkeeping and reporting requirements for SSM events, and semiannual reports instead of annual reports. The expected annual cost to affected major source landfills is only \$1,700 (1998 dollars), which represents less than 0.001 percent of the tipping fees collected by an average sized landfill. For more information on the economic impacts of the standards, refer to the economic impact analysis in the docket.

We also foresee no environmental, energy, or economic impacts for collection and control of landfill gas to area source landfills. As with major source landfills, all area source landfills subject to the final rule are already required to implement the EG/NSPS. Area source landfills that are too small to trigger the EG/NSPS applicability are not subject to control under the

for a source cannot be superseded by another later application deadline unless the title V program itself changes (e.g., a State program under 40 CFR part 70 becomes a Federal program under 40 CFR part 71).

<sup>4</sup> A title V application should be submitted early enough for the permitting authority to find the application either complete or incomplete before the title V application deadline. In the event the application is found incomplete by the permitting authority, the source must submit the information needed to make the application complete by the application deadline in order to obtain an application shield. (An application shield allows a source to operate without being in violation of title V prior to being issued a final title V permit.) To maintain an application shield, a source must submit information as requested by the permitting authority and by the specified deadline. See section 503(d) of the CAA, 40 CFR 70.5(a)(2), 70.7(b), 71.5(a)(2), and 71.7(b).

<sup>5</sup> A title V application from a major source must address all emissions units at the title V source, not just the section 111 or 112 emissions unit. See 40 CFR 70.3(c)(1) and 71.3(c)(1).

standards and, therefore, will not incur impacts.

We expect a positive environmental impact and negligible economic impacts from the requirements for bioreactors. One reason for the small economic impact is that the final rule bioreactor provisions will require gas collection and control for only the same landfills that are already required to install collection and control systems under the EG/NSPS and the final rule. It will not change the number of landfills that must apply controls.

In the analysis described in the supplemental proposal (67 FR 36460, May 23, 2002), we found that greater emissions reductions are achieved by timely control of bioreactor landfills. The analysis also concludes that the bioreactor provisions will not increase the costs of control for most landfills compared to the previous EG/NSPS and final rule cost analyses, and some landfills with bioreactors will experience reduced control costs. We expect the number of bioreactors to increase over the next few years given their potential environmental and economic benefits, and pending regulatory clarifications. A regulation proposed under 40 CFR 258 (67 FR 39662) will provide approved States the ability to issue research, development, and demonstration permits to allow liquids other than leachate to be recirculated into bioreactor landfills. Promulgation of the regulation will lift a barrier for some landfills to become bioreactors and, therefore, is likely to result in an increase of bioreactor landfills. Overall, the bioreactor provisions of the final rule will have minimal economic impacts and may in fact have an overall beneficial economic impact. Additional information on this analysis, including example cases examined, HAP emissions reductions, and NMOC emissions reductions, are contained in Docket No. A-98-28 and in the supplemental proposal (67 FR 36460).

## V. Administrative Requirements

### A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or

adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the final rule is not a "significant regulatory action" because the final rule will not have an annual effect on the economy of \$100 million or more and does not impose any additional control requirements above the 1996 EG/NSPS. We considered the 1996 EG/NSPS to be "significant" because the 1996 EG/NSPS were expected to have an annual effect on the economy in excess of \$100 million. We submitted the 1996 EG/NSPS to OMB for review (61 FR 9905, March 12, 1996). The rule promulgated today is projected to have no significant impact above the 1996 EG/NSPS. Consequently, the final rule was not submitted to OMB for review under Executive Order 12866.

### B. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. We have concluded the final rule may create a mandate on a number of city and county governments, and the Federal government would not provide the funds necessary to pay the direct costs

incurred by the city and county governments in complying with the mandate. However, it will not impose substantial direct compliance costs on State or local governments, it will not preempt State law. Thus, Executive Order 13132 does not apply to the final rule.

Although section 6 of Executive Order 13132 does not apply to the final rule, EPA did consult with State and local governments in developing the 1996 EG/NSPS. The EPA consulted extensively with State and local governments early in the process of developing the proposed regulations to permit them to have meaningful and timely input into its development. Because the control requirements of the final rule are substantially the same as those developed in 1996, the previous consultations still apply. In addition, State and local government agencies participated in a conference call on the bioreactor provisions of the final rule, and provided comments on the proposal, which we considered. For a discussion of our consultations with State and local governments, the nature of the governments' concerns, and our position supporting the need for the specific control requirements included in both the EG/NSPS and the final rule, see the preamble to the 1996 EG/NSPS (60 FR 9918, March 12, 1996).

### C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, (65 FR 67249, November 9, 2000), requires us to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule does not have tribal implications, as specified in Executive Order 13175. Information received from the Regions during development of the Federal Plan showed no landfills on tribal land large enough to require control under the NSPS or the final rule. Thus, Executive Order 13175 does not apply to the final rule.

### D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental

health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives we considered.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation.

The final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because it is based on technology performance and not on health and safety risks. Furthermore, as no alternative technologies exist that would provide greater stringency at a reasonable cost, the results of any children's health analysis would have no impact on the stringency decision.

*E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

The final rule is not subject to Executive Order 13211, (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*F. Unfunded Mandates Reform Act (UMRA) of 1995*

Title II of the UMRA of 1995, Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the final rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The average total annual cost of the final rule for any year has been estimated to be less than \$2.2 million. Thus, the final rule is not subject to the requirements of section 202 and 205 of the UMRA. In addition, we have determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulation does not unfairly apply to small government. Therefore, the final rule is not subject to the requirements of section 203 of the UMRA.

*G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 United States Code (U.S.C.). 601 et seq.*

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. The EPA has also determined that the final rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of the final rule on small entities, small entities are defined as: (1) A small business that is primarily engaged in the collection and disposal of refuse in a landfill operation as defined by North American Industrial Classification System (NAICS) codes 562212 and 924110 with annual receipts less than 10 million dollars; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have determined that small entities will experience little impact since the final rule relies on the requirements specified in 40 CFR part 60, subparts Cc and WWW. Additional requirements for the final rule are limited to a slight increase in the reporting frequency of some reports and the development of a SSM plan. This increase in requirements leads to an increase in annual costs to each affected landfill of \$1700 (1998 dollars), an increase of less than 0.001 percent of the tipping fees taken in by a landfill of average size nationally. Hence, the estimated impacts to small communities, organizations, and firms from the final rule should be insignificant. For more information on the economic analysis in the docket.

Although the final rule for MSW landfills will not have a significant economic impact on a substantial number of small entities, we nonetheless have tried to reduce the impact of the final rule on small entities. To that end, we have evaluated the operational practices, collection systems and control systems required by 40 CFR part 60, subparts Cc and WWW, for co-control environmental benefits. Since the requirements in 40 CFR part 60, subparts Cc and WWW, adequately address the emissions of HAP while controlling landfill gas, we are using these same requirements with a slight increase in reporting activity/frequency for the final rule. In addition to the reduction effort, we performed a number of outreach activities to interact with small entities during the development of the rule. We held formal stakeholder meetings. In addition, we presented rule related information at national conferences sponsored by the trade organizations for these entities, and we requested the establishment of an electronic link between the International City/County Management Association website and our rule development website. Through the efforts discussed above, small entities have been engaged in the rulemaking effort.

*H. Paperwork Reduction Act*

The information collection requirements in the final rule are being submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA,

and a (ICR No. 1938.02) copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email at [auby.susan@epa.gov](mailto:auby.susan@epa.gov), or by calling (202) 566-1672. A copy may also be downloaded off the Internet at "<http://www.epa.gov/icr>".

The information would be used to ensure that the requirements for the rule are implemented properly and are complied with on a continuous basis. Records and reports are necessary to enable us to identify MSW landfills that may not be in compliance with this standard. Based on reported information, we would decide which landfills should be inspected and what records or processes should be inspected. The records that owners or operators of MSW landfills maintain would indicate to us whether personnel are operating and maintaining control equipment properly.

The final rule is projected to affect approximately 1,331 MSW landfills in the first year. The estimated average annual burden for industry for the first 3 years after promulgation of this NESHAP would be 39,360 person-hours annually. There will be \$13,128 of operation and maintenance costs associated with monitoring or recordkeeping during the first 3 years. The estimated average annual burden, over the first 3 years, for the implementing agency would be 21,105 hours with a cost of \$843,150 (including travel expenses) per year.

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

### *I. National Technology Transfer and Advancement Act*

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies such as EPA to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable VCS.

The final rule references 40 CFR part 60, subpart WWW—Standards of Performance for Municipal Solid Waste Landfills. Since there are no new standard requirements in the final rule, and there are no new technical standard requirements resulting from specifying subpart WWW in the final rule, we are not adopting any VCS in the final rule. Landfills have been using the methods in 40 CFR part 60, subpart WWW since March 1996 and are familiar with these technical standards. In addition, no new VCS have been identified, although comments on applicable VCS were requested at the time of proposal. We received no comments on the subject. Also, landfills may request approval to use alternative testing or monitoring methods, as stated in the final rule.

### *J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Therefore, we will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The final rule is not a "major rule" as defined by 5 U.S.C. 804(2), and, therefore, will be effective January 16, 2003.

### List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 26, 2002.

**Christine Todd Whitman,**  
*Administrator.*

For the reasons cited in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

### **PART 63—[AMENDED]**

1. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding a new subpart AAAA to read as follows:

### **Subpart AAAA—National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills**

Sec.

#### **What This Subpart Covers**

- 63.1930 What is the purpose of this subpart?  
63.1935 Am I subject to this subpart?  
63.1940 What is the affected source of this subpart?  
63.1945 When do I have to comply with this subpart?  
63.1947 When do I have to comply with this subpart if I own or operate a bioreactor?  
63.1950 When am I no longer required to comply with this subpart?  
63.1952 When am I no longer required to comply with the requirements of this subpart if I own or operate a bioreactor?

#### **Standards**

- 63.1955 What requirements must I meet?

#### **General and Continuing Compliance Requirements**

- 63.1960 How is compliance determined?  
63.1965 What is a deviation?  
63.1975 How do I calculate the 3-hour block average used to demonstrate compliance?

#### **Notifications, Reports and Records**

- 63.1980 What records and reports must I keep and submit?

#### **Other Requirements and Information**

- 63.1985 Who enforces this subpart?  
63.1990 What definitions apply to this subpart?

#### **Tables to Subpart AAAA of Part 63**

- Table 1 of Subpart AAAA of Part 63—  
Applicability of NESHAP General Provisions to Subpart AAAA

## What This Subpart Covers

### § 63.1930 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants for existing and new municipal solid waste (MSW) landfills. This subpart requires all landfills described in § 63.1935 to meet the requirements of 40 CFR part 60, subpart Cc or WWW and requires timely control of bioreactors. This subpart also requires such landfills to meet the startup, shutdown, and malfunction (SSM) requirements of the general provisions of this part and provides that compliance with the operating conditions shall be demonstrated by parameter monitoring results that are within the specified ranges. It also includes additional reporting requirements.

### § 63.1935 Am I subject to this subpart?

You are subject to this subpart if you meet the criteria in paragraph (a) or (b) of this section.

(a) You are subject to this subpart if you own or operate a MSW landfill that has accepted waste since November 8, 1987 or has additional capacity for waste deposition and meets any one of the three criteria in paragraphs (a)(1) through (3) of this section:

(1) Your MSW landfill is a major source as defined in 40 CFR 63.2 of subpart A.

(2) Your MSW landfill is collocated with a major source as defined in 40 CFR 63.2 of subpart A.

(3) Your MSW landfill is an area source landfill that has a design capacity equal to or greater than 2.5 million megagrams (Mg) and 2.5 million cubic meters (m<sup>3</sup>) and has estimated uncontrolled emissions equal to or greater than 50 megagrams per year (Mg/yr) NMOC as calculated according to § 60.754(a) of the MSW landfills new source performance standards in 40 CFR part 60, subpart WWW, the Federal plan, or an EPA approved and effective State or tribal plan that applies to your landfill.

(b) You are subject to this subpart if you own or operate a MSW landfill that has accepted waste since November 8, 1987 or has additional capacity for waste deposition, that includes a bioreactor, as defined in § 63.1990, and that meets any one of the criteria in paragraphs (b)(1) through (3) of this section:

(1) Your MSW landfill is a major source as defined in 40 CFR 63.2 of subpart A.

(2) Your MSW landfill is collocated with a major source as defined in 40 CFR 63.2 of subpart A.

(3) Your MSW landfill is an area source landfill that has a design capacity equal to or greater than 2.5 million Mg and 2.5 million m<sup>3</sup> and that is not permanently closed as of January 16, 2003.

### § 63.1940 What is the affected source of this subpart?

(a) An affected source of this subpart is a MSW landfill, as defined in § 63.1990, that meets the criteria in § 63.1935(a) or (b). The affected source includes the entire disposal facility in a contiguous geographic space where household waste is placed in or on land, including any portion of the MSW landfill operated as a bioreactor.

(b) A new affected source of this subpart is an affected source that commenced construction or reconstruction after November 7, 2000. An affected source is reconstructed if it meets the definition of reconstruction in 40 CFR 63.2 of subpart A.

(c) An affected source of this subpart is existing if it is not new.

### § 63.1945 When do I have to comply with this subpart?

(a) If your landfill is a new affected source, you must comply with this subpart by January 16, 2003 or at the time you begin operating, whichever is last.

(b) If your landfill is an existing affected source, you must comply with this subpart by January 16, 2004.

(c) If your landfill is a new affected source and is a major source or is collocated with a major source, you must comply with the requirements in §§ 63.1955(b) and 63.1960 through 63.1980 by the date your landfill is required to install a collection and control system by 40 CFR 60.752(b)(2) of subpart WWW.

(d) If your landfill is an existing affected source and is a major source or is collocated with a major source, you must comply with the requirements in §§ 63.1955(b) and 63.1960 through 63.1980 by the date your landfill is required to install a collection and control system by 40 CFR 60.752(b)(2) of subpart WWW, the Federal plan, or EPA approved and effective State or tribal plan that applies to your landfill or by January 13, 2004, whichever occurs later.

(e) If your landfill is a new affected source and is an area source meeting the criteria in § 63.1935(a)(3), you must comply with the requirements of §§ 63.1955(b) and 63.1960 through 63.1980 by the date your landfill is required to install a collection and control system by 40 CFR 60.752(b)(2) of subpart WWW.

(f) If your landfill is an existing affected source and is an area source meeting the criteria in § 63.1935(a)(3), you must comply with the requirements in §§ 63.1955(b) and 63.1960 through 63.1980 by the date your landfill is required to install a collection and control system by 40 CFR 60.752(b)(2) of subpart WWW, the Federal plan, or EPA approved and effective State or tribal plan that applies to your landfill or by January 16, 2004, whichever occurs later.

### § 63.1947 When do I have to comply with this subpart if I own or operate a bioreactor?

You must comply with this subpart by the dates specified in § 63.1945(a) or (b) of this subpart. If you own or operate a bioreactor located at a landfill that is not permanently closed as of January 16, 2003 and has a design capacity equal to or greater than 2.5 million Mg and 2.5 million m<sup>3</sup>, then you must install and operate a collection and control system that meets the criteria in 40 CFR 60.752(b)(2)(v) of part 60, subpart WWW, the Federal plan, or EPA approved and effective State plan according to the schedule specified in paragraph (a), (b), or (c) of this section.

(a) If your bioreactor is at a new affected source, then you must meet the requirements in paragraphs (a)(1) and (2) of this section:

(1) Install the gas collection and control system for the bioreactor before initiating liquids addition.

(2) Begin operating the gas collection and control system within 180 days after initiating liquids addition or within 180 days after achieving a moisture content of 40 percent by weight, whichever is later. If you choose to begin gas collection and control system operation 180 days after achieving a 40 percent moisture content instead of 180 days after liquids addition, use the procedures in § 63.1980(g) and (h) to determine when the bioreactor moisture content reaches 40 percent.

(b) If your bioreactor is at an existing affected source, then you must install and begin operating the gas collection and control system for the bioreactor by January 17, 2006 or by the date your bioreactor is required to install a gas collection and control system under 40 CFR part 60, subpart WWW, the Federal plan, or EPA approved and effective State plan or tribal plan that applies to your landfill, whichever is earlier.

(c) If your bioreactor is at an existing affected source and you do not initiate liquids addition to your bioreactor until later than January 17, 2006, then you

must meet the requirements in paragraphs (c)(1) and (2) of this section:

(1) Install the gas collection and control system for the bioreactor before initiating liquids addition.

(2) Begin operating the gas collection and control system within 180 days after initiating liquids addition or within 180 days after achieving a moisture content of 40 percent by weight, whichever is later. If you choose to begin gas collection and control system operation 180 days after achieving a 40 percent moisture content instead of 180 days after liquids addition, use the procedures in § 63.1980(g) and (h) to determine when the bioreactor moisture content reaches 40 percent.

**§ 63.1950 When am I no longer required to comply with this subpart?**

You are no longer required to comply with the requirements of this subpart when you are no longer required to apply controls as specified in 40 CFR 60.752(b)(2)(v) of subpart WWW, or the Federal plan or EPA approved and effective State plan or tribal plan that implements 40 CFR part 60, subpart Cc, whichever applies to your landfill.

**§ 63.1952 When am I no longer required to comply with the requirements of this subpart if I own or operate a bioreactor?**

If you own or operate a landfill that includes a bioreactor, you are no longer required to comply with the requirements of this subpart for the bioreactor provided you meet the conditions of either paragraphs (a) or (b).

(a) Your affected source meets the control system removal criteria in 40 CFR 60.752(b)(2)(v) of part 60, subpart WWW or the bioreactor meets the criteria for a nonproductive area of the landfill in 40 CFR 60.759(a)(3)(ii) of part 60, subpart WWW.

(b) The bioreactor portion of the landfill is a closed landfill as defined in 40 CFR 60.751, subpart WWW, you have permanently ceased adding liquids to the bioreactor, and you have not added liquids to the bioreactor for at least 1 year. A closure report for the bioreactor must be submitted to the Administrator as provided in 40 CFR 60.757(d) of subpart WWW.

(c) Compliance with the bioreactor control removal provisions in this section constitutes compliance with 40 CFR part 60, subpart WWW or the Federal plan, whichever applies to your bioreactor.

**Standards**

**§ 63.1955 What requirements must I meet?**

(a) You must fulfill one of the requirements in paragraph (a)(1) or (2) of this section, whichever is applicable:

(1) Comply with the requirements of 40 CFR part 60, subpart WWW.

(2) Comply with the requirements of the Federal plan or EPA approved and effective State plan or tribal plan that implements 40 CFR part 60, subpart Cc.

(b) If you are required by 40 CFR 60.752(b)(2) of subpart WWW, the Federal plan, or an EPA approved and effective State or tribal plan to install a collection and control system, you must comply with the requirements in §§ 63.1960 through 63.1985 and with the general provisions of this part specified in table 1 of this subpart.

(c) For approval of collection and control systems that include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping or reporting provisions, you must follow the procedures in 40 CFR 60.752(b)(2). If alternatives have already been approved under 40 CFR part 60 subpart WWW or the Federal plan, or EPA approved and effective State or tribal plan, these alternatives can be used to comply with this subpart, except that all affected sources must comply with the SSM requirements in Subpart A of this part as specified in Table 1 of this subpart and all affected sources must submit compliance reports every 6 months as specified in § 63.1980(a) and (b), including information on all deviations that occurred during the 6-month reporting period. Deviations for continuous emission monitors or numerical continuous parameter monitors must be determined using a 3 hour monitoring block average.

(d) If you own or operate a bioreactor that is located at a MSW landfill that is not permanently closed and has a design capacity equal to or greater than 2.5 million Mg and 2.5 million m<sup>3</sup>, then you must meet the requirements of paragraph (a) and the additional requirements in paragraphs (d)(1) and (2) of this section.

(1) You must comply with the general provisions specified in Table 1 of this subpart and §§ 63.1960 through 63.1985 starting on the date you are required to install the gas collection and control system.

(2) You must extend the collection and control system into each new cell or area of the bioreactor prior to initiating liquids addition in that area, instead of the schedule in 40 CFR 60.752(b)(2)(ii)(A)(2).

**General and Continuing Compliance Requirements**

**§ 63.1960 How is compliance determined?**

Compliance is determined in the same way it is determined for 40 CFR part 60, subpart WWW, including performance testing, monitoring of the collection system, continuous parameter monitoring, and other credible evidence. In addition, continuous parameter monitoring data, collected under 40 CFR 60.756(b)(1), (c)(1), and (d) of subpart WWW, are used to demonstrate compliance with the operating conditions for control systems. If a deviation occurs, you have failed to meet the control device operating conditions described in this subpart and have deviated from the requirements of this subpart. Finally, you must develop and implement a written SSM plan according to the provisions in 40 CFR 63.6(e)(3). A copy of the SSM plan must be maintained on site. Failure to write, implement, or maintain a copy of the SSM plan is a deviation from the requirements of this subpart.

**§ 63.1965 What is a deviation?**

A deviation is defined in § 63.1990. For the purposes of the landfill monitoring and SSM plan requirements, deviations include the items in paragraphs (a) through (c) of this section.

(a) A deviation occurs when the control device operating parameter boundaries described in 40 CFR 60.758(c)(1) of subpart WWW are exceeded.

(b) A deviation occurs when 1 hour or more of the hours during the 3-hour block averaging period does not constitute a valid hour of data. A valid hour of data must have measured values for at least three 15-minute monitoring periods within the hour.

(c) A deviation occurs when a SSM plan is not developed, implemented, or maintained on site.

**§ 63.1975 How do I calculate the 3-hour block average used to demonstrate compliance?**

Averages are calculated in the same way as they are calculated in 40 CFR part 60, subpart WWW, except that the data collected during the events listed in paragraphs (a), (b), (c), and (d) of this section are not to be included in any average computed under this subpart:

- (a) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments.
- (b) Startups.
- (c) Shutdowns.
- (d) Malfunctions.

## Notifications, Records, and Reports

### § 63.1980 What records and reports must I keep and submit?

(a) Keep records and reports as specified in 40 CFR part 60, subpart WWW, or in the Federal plan, EPA approved State plan or tribal plan that implements 40 CFR part 60, subpart Cc, whichever applies to your landfill, with one exception: You must submit the annual report described in 40 CFR 60.757(f) every 6 months.

(b) You must also keep records and reports as specified in the general provisions of 40 CFR part 60 and this part as shown in Table 1 of this subpart. Applicable records in the general provisions include items such as SSM plans and the SSM plan reports.

(c) For bioreactors at new affected sources you must submit the initial semiannual compliance report and performance test results described in 40 CFR 60.757(f) within 180 days after the date you are required to begin operating the gas collection and control system by § 63.1947(a)(2) of this subpart.

(d) For bioreactors at existing affected sources, you must submit the initial semiannual compliance report and performance test results described in 40 CFR 60.757(f) within 180 days after the compliance date specified in § 63.1947(b) of this subpart, unless you have previously submitted a compliance report for the bioreactor required by 40 CFR part 60, subpart WWW, the Federal plan, or an EPA approved and effective State plan or tribal plan.

(e) For bioreactors that are located at existing affected sources, but do not initiate liquids addition until later than the compliance date in § 63.1947(b) of this subpart, you must submit the initial semiannual compliance report and performance tests results described in 40 CFR 60.757(f) within 180 days after the date you are required to begin operating the gas collection and control system by § 63.1947(c) of this subpart.

(f) If you must submit a semiannual compliance report for a bioreactor as well as a semiannual compliance report for a conventional portion of the same landfill, you may delay submittal of a subsequent semiannual compliance report for the bioreactor according to paragraphs (f)(1) through (3) of this section so that the reports may be submitted on the same schedule.

(1) After submittal of your initial semiannual compliance report and performance test results for the bioreactor, you may delay submittal of the subsequent semiannual compliance report for the bioreactor until the date the initial or subsequent semiannual

compliance report is due for the conventional portion of your landfill.

(2) You may delay submittal of your subsequent semiannual compliance report by no more than 12 months after the due date for submitting the initial semiannual compliance report and performance test results described in 40 CFR 60.757(f) for the bioreactor. The report shall cover the time period since the previous semiannual report for the bioreactor, which would be a period of at least 6 months and no more than 12 months.

(3) After the delayed semiannual report, all subsequent semiannual reports for the bioreactor must be submitted every 6 months on the same date the semiannual report for the conventional portion of the landfill is due.

(g) If you add any liquids other than leachate in a controlled fashion to the waste mass and do not comply with the bioreactor requirements in §§ 63.1947, 63.1955(c) and 63.1980(c) through (f) of this subpart, you must keep a record of calculations showing that the percent moisture by weight expected in the waste mass to which liquid is added is less than 40 percent. The calculation must consider the waste mass, moisture content of the incoming waste, mass of water added to the waste including leachate recirculation and other liquids addition and precipitation, and the mass of water removed through leachate or other water losses. Moisture level sampling or mass balances calculations can be used. You must document the calculations and the basis of any assumptions. Keep the record of the calculations until you cease liquids addition.

(h) If you calculate moisture content to establish the date your bioreactor is required to begin operating the collection and control system under § 63.1947(a)(2) or (c)(2), keep a record of the calculations including the information specified in paragraph (g) of this section for 5 years. Within 90 days after the bioreactor achieves 40 percent moisture content, report the results of the calculation, the date the bioreactor achieved 40 percent moisture content by weight, and the date you plan to begin collection and control system operation.

### Other Requirements and Information

#### § 63.1985 Who enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency as well as the

U.S. EPA has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are as follows. Approval of alternatives to the standards in § 63.1955. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

#### § 63.1990 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, 40 CFR part 60, subparts A, Cc, and WWW; 40 CFR part 62, subpart GGG, and subpart A of this part, and this section that follows:

*Bioreactor* means a MSW landfill or portion of a MSW landfill where any liquid other than leachate (leachate includes landfill gas condensate) is added in a controlled fashion into the waste mass (often in combination with recirculating leachate) to reach a minimum average moisture content of at least 40 percent by weight to accelerate or enhance the anaerobic (without oxygen) biodegradation of the waste.

*Deviation* means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including, but not limited to, any emissions limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation, (including any operating limit), or work practice standard in this subpart during SSM, regardless of whether or not such failure is permitted by this subpart.

*Emissions limitation* means any emission limit, opacity limit, operating limit, or visible emissions limit.

*EPA approved State plan* means a State plan that EPA has approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart Cc. An approved State plan becomes effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval.

*Federal plan* means the EPA plan to implement 40 CFR part 60, subpart Cc for existing MSW landfills located in States and Indian country where State plans or tribal plans are not currently in effect. On the effective date of an EPA approved State or tribal plan, the Federal plan no longer applies. The

Federal plan is found at 40 CFR part 62, subpart GGG.

*Municipal solid waste landfill or MSW landfill* means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes (see § 257.2 of this chapter) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads. A municipal solid waste landfill may be publicly or privately

owned. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill, or a lateral expansion.

*Tribal plan* means a plan submitted by a tribal authority pursuant to 40 CFR parts 9, 35, 49, 50, and 81 to implement and enforce 40 CFR part 60, subpart Cc.

*Work practice standard* means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

As stated in §§ 63.1955 and 63.1980, you must meet each requirement in the following table that applies to you.

TABLE 1 OF SUBPART AAAA OF PART 63.—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART AAAA

Part 63 Citation	Description	Explanation
63.1(a) .....	Applicability: general applicability of NESHAP in this part.	Affected sources are already subject to the provisions of paragraphs (a)(10)–(12) through the same provisions under 40 CFR, part 60 subpart A.
63.1(b) .....	Applicability determination for stationary sources.	
63.1(e) .....	Title V permitting.	
63.2 .....	Definitions.	
63.4 .....	Prohibited activities and circumvention .....	Affected sources are already subject to the provisions of paragraph (b) through the same provisions under 40 CFR, part 60 subpart A.
63.5(b) .....	Requirements for existing, newly constructed, and reconstructed sources.	
63.6(e) .....	Operation and maintenance requirements, startup, shutdown and malfunction plan provisions.	
63.6(f) .....	Compliance with nonopacity emission standards .....	Affected sources are already subject to the provisions of paragraphs (f)(1) and (2)(i) through the same provisions under 40 CFR, part 60 subpart A.
63.10(b)(2)(i)–(b)(2)(v) .....	General recordkeeping requirements.	
63.10(d)(5) .....	If actions taken during a startup, shutdown and malfunction plan are consistent with the procedures in the startup, shutdown and malfunction plan, this information shall be included in a semi-annual startup, shutdown and malfunction plan report. Any time an action taken during a startup, shutdown and malfunction plan is not consistent with the startup, shutdown and malfunction plan, the source shall report actions taken within 2 working days after commencing such actions, followed by a letter 7 days after the event.	
63.12(a) .....	These provisions do not preclude the State from adopting and enforcing any standard, limitation, etc., requiring permits, or requiring emissions reductions in excess of those specified.	
63.15 .....	Availability of information and confidentiality.	

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP–2002–0336; FRL–7284–8]

**Extension of Tolerances for Emergency Exemptions (Multiple Chemicals)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation extends time-limited tolerances for the pesticides listed in Unit II. of the **SUPPLEMENTARY INFORMATION**. These actions are in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for